No. (1)

Supreme Court, U.S.
FILED

06-232 MAY 11 2006

OFFICE OF THE CLERK

IN THE

Supreme Court of the United States

PAMELA PERKINS and BRYANT YOUNG,

Petitioner(s)

vs.

SEBRING ASSOCIATES/THE EXCELSIOR II,

Respondent(s).

On Petition For Writ of Certiorari
To the Third Circuit Court Of Appeals

PETITION FOR WRIT OF CERTIORARI

PAMELA PERKINS
BRYANT YOUNG
PRO SE
170 PROSPECT AVENUE, APT. #5E
HACKENSACK, NEW JERSEY 07601
TEL. NO.: (201) 457-9420

QUESTION(S) PRESENTED

1. Did the Defendants allow the Petitioners' Fourth Amendment rights to be violated when they allowed police officers into their building without proper legal documentation ***("Warrant")***?

2. Can the Defendants be held liable for allowing the police to trespass on their premises without a warrant? Are there any trespassing laws broken?

3. Did the Defendants commit Breach of Contract by allowing the incident to occur?

4. Did the Defendants violate the laws of Quiet and Enjoyment?

5. Did the actions of the Defendants cause injury on Petitioner Pamela Perkins?

LIST OF PARTIES

All parties appear in the caption of the case on the cover page.

TABLE OF CONTENTS

Page

Question(s) Presented i

List of Parties ii

Table of Authorities iv

Opinions Below 1

Jurisdiction 1

Constitutional and Statutory Provisions Involved 1

Statement of Case 2

A. Factual Background 2

B. Decisions Below 8

C. Additional Information as a Result of the Incident 9

Reasons for Granting the Writ 10

I. The District Court and the Court of Appeals states that a Cause of Action/Statement of Case was not Presented 10

II. The Decision of the Court of Appeals Conflicts with the Fourth Amendment. 11

III. Breach of Contract/Quiet Enjoyment 14

IV. Criminal Trespassing 15

V. Personal Injury 15

VI. Financial Loss 15

VII. Vital Information 15

Conclusion 16

TABLE OF AUTHORITIES

Page

CASES

Coolidge v. New Hampshire, 403 U.S. 443, 474-475 (1971) 12

Boyd v. United States, 116 U.S. 616, 630 (1886) 13

Johnson v. United States, 333 U.S. 10, 13-14 (1948) 12

Johnson v. United States, supra, at 13-15

McDonald v. United States, 335 U.S. 451, 456 (1948) 13

Michigan v. Clifford, 464 U.S. 287, 296-297 (1984) 13

Payton V. New York, 445 U.S. 573, 100 S. Ct. 1371, 63 L. Ed. 2d 639 11

Payton v. New York, 445 U.S., at 586 12

Perkel v. City of Springfield Missouri et al., 6:98-cv-03486-SOW 11

Steagald v. United States, 451 U.S. 204, 211-212 (1981) 13

United States v. Blake, 632 F.2d 731, 733 (9th Cir. 1980) 14

United States v. Flickinger, 573 F.2d at 1355 13

United States v. Killebrew, 560 F.2d at 733 14

United States v. United States District Court, 407 U.S. 297, 313 (1972) 12

Welsh V. Wisconsin, 466 U.S. 740, 104 S. Ct. 2091, 80 L. Ed. 2d 732, 52 U.S.L.W. 4581 12

CONSTITUTIONAL PROVISIONS

Eighth Amendment (Article VIII) 5, 7

Fourth Amendment (Article IV) 1

PETITION FOR WRIT OF CERTIORARI

OPINIONS BELOW

The opinion of the United States Court of Appeals for the Third Circuit is reported at 05-2235 (Roth, Rendell and Ambro, Circuit Judges) and reproduced in App. 1. The decision of the United States District Court District of New Jersey is reported at 2:04-cv-02008-JLL-RJH, and reproduced in the App. 7.

JURISDICTION

The decision of the United States Court of Appeals for the Third Circuit was entered on February 13, 2006. Petitioners did not file panel rehearing en banc because they will wholly seek the opinion of the United States Supreme Court.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

United States Constitution Amendment IV in pertinent part:

"The right of the people to be secure in their persons, houses, papers, and effects, against **unreasonable searches and seizures, shall not be violated, and no warrants shall issue**, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized."

STATEMENT OF CASE

A. Factual Background

A lawsuit against police officer Carl McLaughlin and the City of New York had been filed (*Young v. The City of New York, et al.*, 1:00-cv-09125-JSM-THK). Mr. Young was handling his case Pro Se and the opposing attorney with the Corporation Counsel was committing abuse of the discovery process. Carl McLaughlin had been demoted and suspended off of the police force. His detective badge had been taken away by the Department and facing termination and was out of work for almost two (2) years. Mr. Young explained to the opposing attorney, Gail Savetamal, that according to the discovery process, he needed that information on Carl McLaughlin's suspension, demotion and the reason why he was facing termination. He was preparing his case and attempting to establish Carl McLaughlin's motive for falsely arresting and maliciously prosecuting him.

Carl McLaughlin had a history of drug addiction even before applying for the police force. Mr. Young knew him. Even before he joined the police force, he had a severe addiction to crack cocaine. Obviously, he lied while applying for the police department. The Gun Control Act of 1986[1] prohibits anyone with a history of drug addiction to

[1] The Gun Control Act of 1968 (also known as GCA or GCA68, and codified as Chapter 44 of Title 18, United States Code) is a federal law in the United States that broadly regulates the firearms industry and firearms owners. It was later augmented, clarified and modified to The Firearms Owners' Protection Act of 1986, which prohibits anyone who is an unlawful user of or addicted to any controlled substance from owning a firearm (From Wikipedia, the free encyclopedia).

own a gun and this law makes it a federal offense for anyone with a drug history own a gun. It holds any entity (gun store, organization lepartment) in violation of a federal offense for supplying the firearm.

The opposing attorney, Gail Savetamal, was not cooperative and was taking advantage of Mr. Young's *pro se* status. On May 3, 2002, he decided to call Carl McLaughlin's last known precinct to retrieve that information. When he called the precinct, he was connected to Carl McLaughlin. Mr. Young was totally unaware the he had recently been reinstated but only as an officer; his detective demotion was permanent. Mr. Young and Carl McLaughlin got into a heated argument. Mr. Young did not threaten him (this can be verified because all precinct phones are recorded). Pamela Perkins was constantly being harassed by her convicted felon father, Curtis Perkins. Carl McLaughlin even arrested her on a complaint made by him. This was absurd! Mr. Young stated to Carl McLaughlin, "What type of officer would arrest a young lady on a complaint from a convicted felon father who molested her when she was 14?" As soon as he stated that, Carl McLaughlin then hung up the phone. That night is when the incident occurred.

Ms. Perkins heard a knock at the door. She didn't receive a call from the Front Desk. Ms. Perkins and Mr. Young live in a luxury building with a 24-hour concierge where they usually receive a call from the front desk whenever there's a visitor. Ms. Perkins did not receive a call from the Front Desk. The doorman who was working at the time is willing to testify that about twenty (20) plainclothes police ran into the building from the front and the back doors. They showed him a picture of a convicted felon named Kevin Saxon. At that time, Kevin Saxon had made major news. He

was a drug dealer and a fugitive who had escaped from a police van and had made it all the way down to Virginia.[2] These corrupt officers had the audacity to show him a picture of Kevin Saxon and said, "Does he live in Apt. 5E?" The doorman stated that he looked in the front desk tenant log and said, "Oh, Pamela Perkins lives in 5E?" And then they said, "That's him." Then they ran up the stairs. When does the name "Pamela" sounds like a "that's him," and why would they show him a picture of Kevin Saxon, which was extracted from a newspaper article. Their corruption is obvious. Ms. Perkins will further testify that she heard a knock on the door approximately 9:30 p.m. and she looked through the peephole and there was a woman who said, "Can I speak to you for a minute?" Assuming it was a neighbor that may have needed her assistance (because she didn't receive a call from the front desk), she opened the door and that's when 20 plainclothes police officers pushed their way in. They threw her to the ground and they all piled on top of her. Ms. Perkins stated that she began to suffocate and was on the verge of blacking out and felt she was going to die due to suffocation. Once they saw that they had gone too far, they pulled her to her feet and one of the officers punched her in her face, and yelled you "black bitch" and then another officer maced her in her face.

Mr. Young came home approximately 10:30 p.m. When he got upstairs to his apartment, he opened the door and saw about seven (7) men and one (1) woman surrounding Ms. Perkins. She was on a stretcher. The first thing he thought was that Ms. Perkins may have had a heart attack and these people were here to help. Then all of a sudden, one of these plainclothes persons said to him, "You're under arrest

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[2] New York: Bronx: Inmate Escapes On Way To Jail. By Tina Kelley (*The New York Times Archives* – Published May 3, 2002.

and proceeded to handcuff him. He did not say, "Bryant Young I have a warrant for your arrest" nor did he say, "Bryant Young, I'm from the New York police department – I have a warrant for your arrest and now Hackensack police is going to take you into custody." None of these verbal exchanges took place. He just said, "You're under arrest" and proceeded to handcuff him. They did not show Mr. Young any warrant and they were in his home, so he did not go peacefully.

They brought Mr. Young downstairs and then they took him to Hackensack Precinct. They took Ms. Perkins to the precinct on a stretcher. Mr. Young had to yell at them for them to take her to the hospital. They put him in a cell in the precinct and they never told him what he was being charged with. After spending one (1) night in the precinct, the next day he was told that he was being transferred to Bergen County Jail facility. He never received a bail and still did not know what he was being charged with. According to the **Eighth Amendment** of the United States Constitution, which is part of the U.S. Bill of Rights, it prohibits excessive bail or fines, as well as cruel and unusual punishment. He could not get a bail because once he got in Bergen County Jail, he called a friend collect and they called the administration office of Bergen County Jail facility. She was told that he was processed as a fugitive and that a fugitive could not get a bail. Mr. Young was not a fugitive. Pamela Perkins was charged with Aggravated Assault on a Police Officer; Assault on a Police Officer and Obstruction of Justice.

Mr. Young had to hire an attorney from inside of the facility to go before a judge so that he could receive a bail.[3] Mr. Young spent a total of six (6) days in Bergen County Jail. Once released, he journeyed to the Brooklyn Court to see if there was a warrant for his arrest. When he got to Brooklyn Court, he went to the Warrant Office and found out there was never a warrant issued from their office. He was sent to another office and all of a sudden, he was arrested. Obviously, it was just an illegal act to get him to turn himself in. For what? – he wasn't wanted for anything. Their police corruption and misconduct is obvious. Later they tried to produce a false document stating the New York came with a warrant. Not only was this document false, they never showed us any warrants (fake or real) when they came to our home. When they tried to produce a fake document months later when Pamela's case started, the fake document read "**Warrant Investigation Report**" (See App. 14). While investigating this document, an officer at the Brooklyn Court Warrant Office, where the initial complaint supposed to have been filed, stated that Warrant Investigation Reports aren't even used anymore and that they are illegal. This document even had a judge's signature, Hon. James D. Gibbons, and this judge is currently being investigated. We reiterate, that they came forth with this false document about six (6) months after the incident and any warrant (fake or real) was not present at or around the time of the incident.

After spending fifteen (15) hours in holding in the Brooklyn Court, Mr. Young was released on his own recognizance. Why was he held for 15 hours in a cell if there was a valid warrant for his arrest? The purpose of a warrant is for a suspect to go before a judge to be arraigned (their

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[3] Violation of the Eighth Amendment (*cruel and unusual punishment*).

corruption is obvious). This was a Friday night, so he was not able to hire an attorney for Ms. Perkins so that she could have her bail lowered until Monday. Then Ms. Perkins was released on a Tuesday. Ms. Perkins' initial bail was set at $25,000 with no 10% - this constitutes a violation of the Eighth Amendment (*cruel and unusual punishment*). Ms. Perkins did a total of eleven (11) days in Bergen County Jail.

They never stated that they came to the apartment looking for Ms. Perkins; they came to the apartment looking for Bryant Young. After court proceedings began for Mr. Young at the Brooklyn Court, all charges were dismissed. There were no charges at all. Not only was charges dismissed, Mr. Young sued the City of New York (*Young v. The City of New York et al.*, 1:03-cv-05543-RMB-DCF) and received damages. Ms. Perkins' case then started. Would you believe Ms. Perkins was being charged with Aggravated Assault and Obstruction of Justice? How could she have been charged with these crimes if they came there for Bryant Young? A complaint had been filed against Ms. Perkins that she assaulted them when they came looking for Mr. Young, which was a total fabrication. They had to cover up their actions for being at the apartment, which was initially in Ms. Perkins' name. Ms. Perkins went to trial. The unfortunate thing about this was that majority of these Hackensack police officers weren't even on duty. Mr. Young found this information out while pursuing a lawsuit, which is still ongoing, against Hackensack police. They weren't even on-duty. So if they were not on duty, they were trespassing. They were not acting in their capacity as police officers. So Ms. Perkins was charged with a felony from police officers that weren't even on-duty and had no legal right to be there. They were criminally trespassing. Their corruption and misconduct was obvious.

Ms. Perkins wanted a non-jury trial. In conclusion of the bench trial, all serious charges were dropped. All of this could have been avoided if the Defendants ("the Management") would not have allowed the police to come into their building that night because the police did not possess a warrant, which made it illegal. In luxury buildings in New York and New Jersey, police must to get permission before they enter a building. The law[4] makes it illegal for them to enter without a warrant to arrest someone and they did not possess a warrant for Ms. Perkins or Mr. Young. The Management gave them permission; they wouldn't have been there if they wouldn't have gotten permission. Management/owners, banks and the companies that own luxury buildings are very resourceful and the police presence is prohibited unless they have permission. A few days later when the Concierge came back on-duty, he stated to us that he logged in every thing that happened that night (May 3, 2002). He explained to us when he reviewed what he logged in, all the information had been ripped out of the book; the corruption is obvious. The Concierge is willing to testify to this. According to our lease, the Management stated that as long as we followed the rules of the lease, that we would enjoy quiet and enjoyment (See App. 15).

B. Decisions Below

On April 29, 2004, Petitioners filed an action in the United States District Court, District of New Jersey holding the Defendants responsible for their actions by allowing law enforcement into their building without a warrant. The lawsuit alleged, among other things, that the Defendants completely disregarded our rights as tenants and violated the Fourth Amendment of the United States Constitution. On

[4] Fourth Amendment of the United States Constitution.

March 17, 2005, the District Court issued their Letter Order and Opinion dismissing Petitioners' action.

On April 25, 2005, Petitioners appealed this decision and filed an Appeal in the U.S. Court of Appeals for the Third Circuit. The Court of Appeals denied Petitioners' appeal and issued a Not Precedential Per Curiam Opinion affirming Judgment of the Defendants on February 13, 2006.

C. Additional Information as a Result of the Incident

About two (2) years after the incident, Ms. Perkins had taken very ill and she went to the hospital. She had to have an operation and she had to see a specialist. It was determined that Ms. Perkins had suffered from paid from major tumors that had to be removed. When she spoke to her doctor about the incident, the doctor told her about the severity of tumors, and that any physician would tell her that her tumors were there at the time of the incident. How much damage did the police actually do when they threw Ms. Perkins to the floor and they piled on top of her? They tried to act as if they had a real reason to be there. They were trying to make it appear that they were not trespassing. They wanted to make it appear that they were apprehending some real vicious criminals.

While Ms. Perkins was at the hospital during her arrest, a hospital administrator stated to her that the police stated they were at her apartment for Bryant Young's involvement in illegal drugs. Bryant was charged with Aggravated Harassment in the Second Degree and all charges were dismissed. We have a document that proves that they stated that they were there for drugs (See App. 16). Their corruption is obvious. This was a total fabrication. Bryant

Young has never been even been involved in cigarettes, not to mention drugs. They used that false accusation because he is an African American male.

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REASONS FOR GRANTING THE WRIT

I. The District Court and the Court of Appeals states that a Cause of Action/Statement of Case was not Presented.

The definition of **Cause of Action** is:

> A set of facts or allegations that makes up the grounds for filing a lawsuit. The right to bring an action, which implies that there is some person in existence who can assert, and also a person who can lawfully be sued.

Petitioners are listing the following as their cause of action(s):

A) Violation of the Fourth Amendment of the United States Constitution;

B) Breach of Contract/Quiet Enjoyment;

D) Criminal Trespassing;

E) Personal Injury; and

F) Financial Loss.

II. The Decision of the Court of Appeals Conflicts with the Fourth Amendment.

The cases cited below supports that fact that the Defendants violated the Fourth Amendment:

> *Perkel v. City of Springfield Missouri et al.*, 6:98-cv-03486-SOW, supports the fact that warrantless arrest in the home is unproper police conduct and unconstitutional.
>
> In *Payton V. New York*, 445 U.S. 573, 100 S. Ct. 1371, 63 L. Ed. 2d 639, the Fourth Amendment, made applicable to the States by the Fourteenth Amendment, prohibits the police from making a warrantless and nonconsensual entry into a suspect's home in order to make a routine felony arrest. Pp. 583-603. It further states that:
>
> > (a) The physical entry of the home is the chief evil against which the wording of the Fourth Amendment is directed. To be arrested in the home involves not only the invasion attendant to all arrests, but also an invasion of the sanctity of the home, which is too substantial an invasion to allow without a warrant, in the absence of exigent circumstances, even when it is accomplished under statutory authority and when probable cause is present. In terms that apply equally to seizures of property and to seizures of persons, the Fourth Amendment has

> drawn a firm line at the entrance to the house. Absent exigent circumstances, that threshold may not reasonably be crossed without a warrant. Pp. 583-590.

Welsh V. Wisconsin, 466 U.S. 740, 104 S. Ct. 2091, 80 L. Ed. 2d 732, 52 U.S.L.W. 4581 states:

> It is axiomatic that the "physical entry of the home is the chief evil against which the wording of the Fourth Amendment is directed." *United States v. United States District Court*, 407 U.S. 297, 313 (1972). And a principal protection against unnecessary intrusions into private dwellings is the warrant requirement imposed by the Fourth Amendment on agents of the government who seek to enter the home for purposes of search or arrest. See Johnson v. United States, 333 U.S. 10, 13-14 (1948). *fn10 It is not surprising, therefore, that the Court has recognized, as "a 'basic principle of Fourth Amendment law[,]' that searches and seizures inside a home without a warrant are presumptively unreasonable." *Payton v. New York*, 445 U.S., at 586. See *Coolidge v. New Hampshire*, 403 U.S. 443, 474-475 (1971) ("a search or seizure carried out on a suspect's premises without a warrant is per se unreasonable, unless

> the police can show . . . the presence of ' exigent circumstances'"). See also *Michigan v. Clifford*, 464 U.S. 287, 296-297 (1984) (plurality opinion); *Steagald v. United States*, 451 U.S. 204, 211-212 (1981); *McDonald v. United States*, 335 U.S. 451, 456 (1948); *Johnson v. United States*, supra, at 13-15; *Boyd v. United States*, 116 U.S. 616, 630 (1886).

United States Of America v. John Henry Morgan, 743 F.2d 1158 states:

> During the one- to two-hour period between Sheriff Reynolds' first observation of Morgan at Potter Falls and Morgan's subsequent arrest, no effort was made by any law enforcement agency to obtain a search or arrest warrant. The district court found no exigent circumstances justifying the police officers' warrantless entry and subsequent search of the Morgan home. In the opinion of the court, "there was sufficient time" to obtain an arrest or search warrant. In *United States v. Flickinger*, 573 F.2d at 1355, the court explained that the "term 'exigent circumstances,' in conjunction with an arrest in a residence, refers to a situation where the inevitable delay incident to obtaining a warrant must give way to an urgent need for

> immediate action." See also *United States v. Blake*, 632 F.2d 731, 733 (9th Cir. 1980). Moreover, the critical time for determining whether exigency exists "is the moment of the warrantless entry by the officers" onto the premises of the defendant. *United States v. Killebrew*, 560 F.2d at 733.

III. Breach of Contract/Quiet Enjoyment.

According to our lease, the Management stated that as long as we followed the rules of the lease, that we would enjoy quiet and enjoyment (See App. 15).

Paragraph No. 23 of the Defendants' lease states the following regarding **"Quiet Enjoyment"**:

> 23. **Quiet Enjoyment**.
> Subject to the other terms of this lease and if the Tenant complies with the terms of this lease, the Tenant shall have the right to the undisturbed possession of the Apartment.

This means that as long as the tenants follow the rules of the lease, the Management will see to it that they live in quiet enjoyment. The Defendants committed breach of contract. Implied obligations of a landlord that a tenant's peaceful enjoyment of the premises shall not be interfered with by the landlord or by any person who claims under him. "Quiet" is not restricted to an absence of noise; it has been interpreted as "uninterrupted". The Tenant's remedies for breach of his/her quiet enjoyment are damages and injunction.

According the policy of the building, all visitors must be announced upon entrance of in the building. The Management violated this policy by allowing police in their building further making a warrantless arrest.

IV. Criminal Trespassing.

The police weren't even on duty, which constitutes criminally trespassing.

V. Personal Injury.

Ms. Perkins was injured while suffering tumors. For a woman who had never had an abortion, she had to have a hysterectomy to safely remove the tumors. Now she could never bear children.

VI. Financial Loss.

Not long after the incident, Ms. Perkins lost her job for missing work all those days and she was unemployed for a year and 3 months. She suffered financially. If Ms. Perkins were employed for that year and 3 months, she would have made $51,200. In addition to lost wages, the legal fees amounted to $4,598. The total financial loss is **$55,798**.

VII. Vital Information.

All these violations came from a luxury building where most of the tenants are white Americans. This particular luxury building is funded by the Government.

HUD: Housing Urban Development (The Management's discrimination and hypocrisy is obvious).

CONCLUSION

The petition for a writ of certiorari should be granted and the decision of the Court of Appeals overturned and we be allowed to exercise our **Seventh Amendment** right. This whole incident is a result of the Defendants allowing police in their building. It is very clear that if the Management would not have allowed this, Pamela would have never been arrested and injured. Even if they tried to testify that they were there for Bryant Young and was determined to arrest him, Pamela did not have to be involved (the building consists of a lobby, front space, etc., etc.). It was obvious that these corrupt police wanted to falsely arrest both of them and the Management gave these corrupt police their blessing. The Defendants were not legally bound to allow that because there were no warrants.

Respectfully submitted,

Pamela Perkins

Pamela Perkins
170 Prospect Avenue, Apt. 5E
Hackensack, New Jersey 07601
(201) 457-9420
Pro Se

Bryant Young

Bryant Young
170 Prospect Avenue, Apt. 5E
Hackensack, New Jersey 07601
(201) 457-9420
Pro Se

Dated: May 11, 2006

UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

NO. 05-2235

PAMELA PERKINS; BRYANT YOUNG,

Appellants

v.

SEBRING ASSOCIATES THE EXCELSIOR II; ANTHONY SCOTT PALMERI, Owner 140 Prospect Avenue Hackensack, NJ 07601

On Appeal From the United States District Court
For the District of New Jersey
(D.C. Civ. No. 04-02008)
District Judge: Honorable Jose L. Linares

Submitted Under Third Circuit LAR 34.1 (a)
October 21,2005

BEFORE: ROTH, RENDELL and AMBRO,
CIRCUIT JUDGES

JUDGMENT

This cause came on to be heard on the record from the United States District Court for the District of New Jersey and was submitted pursuant to Third Circuit *LAR 34.1(a)*.

On consideration whereof, it is now here

ORDERED AND ADJUDGED by this Court that the judgment of the District Court entered March 18, 2005, be, and the same is hereby affirmed. Costs taxed against the Appellants. All of the above in accordance with the opinion of this Court.

ATTEST:

S/Maurice Walden
Clerk

DATED: February 13, 2006

NOT PRECEDENTIAL

UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

NO. 05-2235

PAMELA PERKINS; BRYANT YOUNG,

Appellants

v.

SEBRING ASSOCIATES THE EXCELSIOR II; ANTHONY SCOTT PALMERI, Owner 140 Prospect Avenue Hackensack, NJ 07601

On Appeal From the United States District Court
For the District of New Jersey
(D.C. Civ. No. 04-02008)
District Judge: Honorable Jose L. Linares

Submitted Under Third Circuit LAR 34.1 (a)
October 21,2005

BEFORE: ROTH, RENDELL and AMBRO,
CIRCUIT JUDGES

(Filed February 13, 2006)

OPINION

PER CURIAM

Police officers arrested Pamela Perkins and Bryant Young in their apartment in "Sebring Associates/The Excelsior II," an apartment building owned by "Anthony/Scott Palmeri." Perkins and Young brought suit against their building and its owner, contending that the named Defendants/Appellees disregarded their rights when Defendants/Appellees allowed police officers "to push their way past a security desk and into a tenant's apartment." Compl. at "Questions Presented." They also claimed that "Sebring Associates jeopardized [their] safety and lives." Id. ¶ 22. More specifically, Perkins complained that the person stationed at the front desk of the building did not alert her to the police presence because a police officer prevented him from doing so. See Id. ¶ 6. Perkins and Young also alleged that the police entered the building with the permission of "The Excelsior II." Id. ¶ 21. In the rest of their complaint, they described the actions of the police officers and the aftermath of their arrests.

Perkins and Young listed their claims as violations of the Fourth Amendment and other "civil rights," as well as claims of "discrimination," "violation of the right to privacy (trespassing with no search warrant)," "embarrassment and defamation of character," and "financial loss." Complaint at "Preliminary Statement" and "Questions Presented."[1] The

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[1] On appeal, Appellants restate their allegations and specifically argue that the District Court did not properly evaluate their claims of violations of the Fourth Amendment, their right to quiet enjoyment of their residence, and their right to privacy. See Appellants' Brief at 8-9. In their brief, they also include claims of trespassing, defamation, and perjury. See id. at 10. They first raised their claim relating to quiet enjoyment in a supplemental response to the motion to dismiss filed in the District Court. The District Court construed any potential federal

District Court held that Perkins and Young failed to state a federal claim and declined to exercise supplemental jurisdiction over their state law claims. See FED. R. CIV. P. 12(b)(6); 28 U.S.C. § 1367(c). Perkins and Young appeal.

We have appellate jurisdiction under 28 U.S.C. § 1291. We exercise plenary review over the dismissal pursuant to Rule 12(b)(6). Lum v. Bank of Am., 361 F.3d 217, 223 (3d Cir. 2004). We review the dismissal of the state law claims pursuant to 28 U.S.C. § 1367(c) for abuse of discretion. Cf., De Asencio v. Tyson Foods. 342 F.3d 301, Inc., 311 (3d Cir. 2003).[2]

We will affirm the District Court's order because Perkins and Young failed to state a claim under 42 U.S.C. § 1983. As the District Court noted, § 1983 claims require state action. See Lugar v. Edmundson Oil Co., 457 U.S. 922, 929 (1982). In their allegations against the named Defendants/Appellees, the entirety of which are reproduced above, Perkins and Young did not allege state action. They did not allege that Defendants/Appellees, who are not state actors, engaged in concerted behavior, extensive cooperation, or a conspiracy with the state. See. e.g.. Harvey v. Plains Twp. Police Dep't, No. 04-1148,2005 U.S. App. LEXIS

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claims against the named Defendants/Appellees as claims arising under 42 D.S.C. § 1983, and did not explicitly list the state law claims it declined to consider. Because it appears that the claim of a violation of the right to quiet enjoyment was one of the claims the District Court evaluated, the dismissal of that claim will be considered. However, we will not consider new claims of defamation or other claims raised for the first time on appeal. See Harris v. City of Philadelphia, 35 F.3d 840, 845 (3d Cir. 1994).

[2] In light of the arguments pro se Appellants present in their brief, we reject Appellees' contention that Appellants do not challenge the dismissal of their state law claims.

18756, at * 24-25 (3d Cir. Aug. 30,2005); Moore v. Marketplace Rest.. Inc., 754 F.2d 1336, 1352-53 (7th Cir. 1985). They merely claimed that police officers, who converged on their apartment building and prevented the person at the front desk from calling Perkins, were allowed to enter the building to arrest them. Such allegations do not state a claim under § 1983 for a violation of the Fourth Amendment. Indeed, they do not state a claim upon which relief can be granted under any federal law .

Because Perkins and Young failed to state a federal cause of action, the District Court properly acted within its discretion to choose not to exercise supplemental jurisdiction over their state law claims. See 28 D.S.C. § 1367(c); De Asencio, 342 F.3d at 309.

For the foregoing reasons, the District Court's order will be affirmed.

UNITED STATES DISTRICT COURT
District of New Jersey

CHAMBERS OF JOSE L. LINARES JUDGE
MARTIN LUTHER KING JR. FEDERAL BUILDING &
U.S. COURTHOUSE 50 WALNUT ST., ROOM 5054
P.O. Box 999
Newark, NJ 07101-0999
973-645-6042

March 17, 2005

LETTER ORDER & OPINION

Pamela Perkins
170 Prospect Avenue #5E
Hackensack, NJ 07601

Dennis M. Rothman
Lester, Schwab, Katz & Dwyer
24 Lackawanna Plaza
P.O. Box 745
Millbum, NJ 07041

Re: **Perkins. et al. v. Sebring Assocs. et al.**
Civil Action No. 04-CV -2008 (JLL)

Dear Counsel:

Introduction

This matter is before the Court on defendants' motion to dismiss under Federal Rule of Civil Procedure 12(b)(6).

The Court has considered the submissions in support of and in opposition to the motion. There was no oral argument. See Fed. R. Civ. P. 78.

Background

Plaintiff filed this action on or about April 29, 2004.[1] She alleges that, on May 3, 2002, several police officers arrived at her apartment building in Hackensack, New Jersey. (Compl. ¶ 2.) These officers, she alleges, were wearing plainclothes and did not have a search warrant. (Id.) They also did not identify themselves to the individual at the front desk, Mr. Frank Cook. (Id. ¶ 3). Plaintiff contends that the officers showed Mr. Cook a photograph of a fugitive named Kevin Saxon. (Id.) When Mr. Cook told the officers he did not recognize Mr. Saxon, plaintiff alleges, the officers "rushed upstairs via the stairwell and elevator" to her apartment. (Id. ¶ 4.) As the officers made their way to her apartment, plaintiff claims that one officer remained at the front desk to ensure that Mr. Cook would not alert her to the officers' arrival. (Id. ¶ 6.) Plaintiff avers that a female officer soon thereafter knocked on her door. (Id. ¶ 7.) Plaintiff, "[a]fter looking through the peephole," inquired who was knocking, and the female officer allegedly replied: "Can I talk to you?" (Id.) When plaintiff opened the door, she alleges, the officers rushed in and informed her that she was under arrest. (Id. ¶ 9.) Plaintiff submits she was then assaulted, maced, and taken into custody. (Id. ¶ 10-11.) The remainder of plaintiffs Complaint involves judicial process and the like and is not relevant to this motion.

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[1] Pamela Perkins brings this action along with her purported roommate, Bryant Young; however, because the facts alleged in the Complaint that are relevant to this motion involve only Ms. Perkins, the Court, for ease of description, will refer only to Ms. Perkins, whom it will call "plaintiff."

Plaintiff has sued only the apartment building, "Sebring Associates/The Excelsior," and the building's owner, "Anthony/Scott Palmeri." Defendants now move to dismiss under Rule 12(b)(6).

Discussion

Plaintiff is proceeding pro se. As a result, this Court holds her pleading to "less stringent standards than formal pleadings drafted by lawyers." Haines v. Kerner, 404 U.S. 519, 520~21 (1972}. Plaintiff alleges Fourth Amendment and "civil rights" violations, and the Court construes these as claims under 42 U.S.C. § 1983.[2] For the following reasons, and notwithstanding the more relaxed pro se pleading standards, plaintiff fails to state a cause of action under § 1983.

First, claims under § 1983 require state action. Lugar v. Edmondson Oil Co., 457 U.S. 922,929 (1982). For this reason, meritorious § 1983 claims against private citizens are exceedingly rare. The few reported cases that have addressed such claims have without exception held that conspiratorial behavior, concerted activity, or extensive cooperation between the private and state actors is required by the statute.

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[2] Section 1983 provides:

> Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.

See Destek Group, Inc. v. Pub. Util. Comm'n, 318 F.3d 32, 39-40 (1st Cir. 2003) (upholding dismissal of § 1983 claims against private corporation that had entered into agreement with state university to provide cell phone service in supposed violation of plaintiff's competitive rights, because conduct was not "fairly attributable to the State"); Rodriques v. Furtado, 950 F.2d 805,813-15 (1st Cir. 1991) (holding that doctor who performed vaginal search of plaintiff pursuant to a search warrant was state actor, but that doctor had qualified immunity); Moore v. Marketplace Rest., Inc., 754 F.2d 1336, 1352-53 (7th Cir. 1985) (upholding dismissal of § 1983 claim against restaurant owner who had allegedly "fingered" patrons for deputies to arrest, because plaintiff failed to present sufficient evidence "of some concerted effort or plan" between the owner and the state actors); Temple v. Albert, 719 F. Supp. 265,267 (S.D.N.Y. 1989) (denying motion by doctor to dismiss § 1983 complaint, because plaintiff alleged a conspiracy between the doctor and arresting officers to deny plaintiff medical treatment); Preston v. Rossi, 1986 U.S. Dist. LEXIS 18141, at *1 (E.D. Pa. Nov. 4, 1986) (dismissing § 1983 claim against private actor for failure to allege that robbery was conducted "in concert with public officials"). Here, plaintiff's Complaint fails to allege conduct on defendants' part that is sufficiently intertwined with the conduct of the officers. To the contrary, she alleges only that Mr. Cook failed to prevent the officers from "rushing" past his desk, and that he was then held at bay so that he would not call plaintiff's apartment from his telephone. (Compl. ¶¶ 4, 6.) Moreover, plaintiff claims that the officers did not even identify themselves as such (id. ¶ 3), a fact which, while perhaps supporting a claim for breach of common law duty, in that Mr. Cook allowed strange civilians past the front desk, would appear to foreclose the possibility of a conspiracy between Mr. Cook and state actors.

Second, and closely related to the previous point, there is an important action-inaction problem at issue here. Section 1983 claims based upon the inaction of a defendant are extraordinarily difficult to sustain. Indeed, even state actors, the intended subjects of the statute, cannot be held liable under § 1983 for failure to act unless they somehow create the peril from which the plaintiff requires rescue. See DeShaney v. Winnebago County, 489 U.S. 189, 196-203 (1989). Here, plaintiffs implicit theory of § 1983 liability flips DeShaney on its head by imposing an affirmative duty upon private actors to protect others from the (seemingly) illegal encroachments of the state. The absurdity of such a ruling is underscored by the fact that Mr. Cook was, by plaintiff s own version of the facts, forbidden by the police to warn plaintiff of their impending arrival. (Compl. ¶ 6.) Were such conduct sufficient to give rise to § 1983 liability, every private person within the jurisdictional reach of the district courts would be duty bound to interfere in police business when that business appears legally questionable – this Court refuses to (in effect) deputize an army of private internal affairs officers.

Third, there is virtually no nexus between Mr. Cook and the actual alleged violations of the Fourth Amendment. Plaintiffs § 1983 allegations appear to constitute false arrest, excessive force, and malicious prosecution claims. All the alleged facts relevant to these claims, however, occurred after (1) the female officer knocked on plaintiffs door, (2) plaintiff looked through her peephole and asked who it was, (3) the female officer asked to speak with plaintiff, and (4) plaintiff voluntarily opened her door. (Id. ¶¶ 7-9.) The only plausible theory enveloping Mr. Cook in the alleged abuse that followed is that, by failing to obstruct the entry of up to twenty police officers into the inner corridors of the apartment building (id. ¶ 2), he created an environment

wherein it was easier for the officers to coax plaintiff into willingly opening her door for them. (See id. ¶ 8 (alleging that plaintiff "assumed that the woman at her door was a neighbor because she did not receive a telephone call from the Front/Security Desk").) This is an incredibly tenuous basis for liability. Had Mr. Cook actively participated in a subterfuge to enable the officers to gain entry, or had he used a master key to open plaintiffs door, plaintiffs theory would gain some strength. But under the facts alleged, § 1983 liability would be patently unfair .

Fourth, Mr. Cook himself is not even a named defendant in this action. Plaintiff has sued only the building and its owner. If a municipality cannot be held vicariously liable for the constitutional torts of its agents, Monell v. Dep't of Soc. Servs., 436 U.S. 658, 695-95 (1978), it follows with even greater force that a private actor cannot be held so liable. This reasoning is supported by the plain language of the statute, which requires participation by the named defendant. See 42 U.S.C. § 1983 ("Every person who ... subjects, or causes to be subjected, any citizen ... to the deprivation of any rights ... secured by the Constitution and laws, shall be liable to the party injured ... ."). There being no allegation in the Complaint that Sebring Associates or Mr. Palmeri had any involvement in the events of May 23, 2002, plaintiffs § 1983 must fail.

Conclusion

For the reasons set forth herein, defendants' motion to dismiss plaintiff's federal claims is GRANTED. The Court declines to exercise supplemental jurisdiction over the remaining State claims. 28 U.S.C. § 1367(c)(3). The relevant limitations periods for these claims are tolled for forty-five (45) days within which time plaintiff is permitted to re-file

these in State Court. See Clark v. Buchko, 936 F. Supp. 212, 223 (D.N.J. 1996) (citing Galligan v. Westfield Ctr. Serv., Inc., 82 N.J. 188 (1980)). This action is dismissed.

SO ORDERED.

/s/ Jose L. Linares
United States District Judge

WARRANT INVESTIGATION REPORT
PD 374-151 (Rev. 3-01)

Criminal Court of the City of New York

ARREST WARRANT
BENCH WARRANT

Part: AR3 County: Kings

2002KN027938

In the name of the People of the State of New York: To any Police Officer of the City of New York.

An appropriate accusatory instrument having been filed with this Court against YOUNG (LAST NAME) BRYANT (FIRST NAME) Harbemat (MIDDLE NAME) and

240.36 Agg Harassment

the defendant in the criminal action herein; charging him with

☒ the defendant not having been arraigned upon the accusatory instrument by which this criminal action against him was commenced and this Court requiring his appearance before it for the purpose of arraignment upon the accusatory instrument specified above

☐ the defendant having been arraigned upon the accusatory instrument by which this criminal action against him was commenced and this Court requiring his appearance before it in this pending criminal action.

☐ the defendant having been convicted of _____ and having been sentenced to _____ and this Court requiring his appearance before it.

You are therefore commanded forthwith to arrest the defendant named above and bring him before this Court without unnecessary delay. However, when a different procedure after arrest is mandated by law, you shall proceed in compliance with that mandate.

5-3-2002
Dated

City of New York

HON. JAMES D. GIBBONS
By Order of the Court
Judge (Arrest Warrant) Court Clerk (Bench Warrant)

☐ NYSID No. Not Available ☒ NYSID No. Entered in Box 10 Below

BAIL CONDITION VIOLATED:

PRINT or TYPE ALL INFORMATION CAPTIONS

ENTERED - NOC NO.	ENTERED - DC-1 NO.	ENTERED - DC-61 NO.	CITY/JA	SID
			☐	☐ Y

1. DEFENDANT'S LAST NAME, FIRST, M.I.	2. SEX	3. RACE	4. DATE OF BIRTH (MO. DAY YR.)	5. HGT.	6. WGT.	7. EYE COLOR	8. HAIR COLOR	9. SKIN TONE
YOUNG BRYANT H	M	B	08 17 64	5'9	200	BA	BLK	MED

10. NYSID NUMBER (NYSID)	11. SOCIAL SECURITY NO.	12. DRIVER'S LICENSE NUMBER	( ) OPER.	( ) CHAUF.
8 8 0 1 2 0 1 9 H	1 1 8 5 8 0 4 0 8			

13A. STATE	13B. YEAR LIC. EXP.	13. OFFENSE CODE	14. DATE OF WARRANT (MO. DAY YR.)	15. NYPD WARRANT DIVISION BENCH WARRANT NO.	16. COURT DOCKET NUMBER

17. DEFENDANT'S VEH. REG. NO.	11. PCT. COMPLAINT NO.	YR	18. VICTIM INFORMATION: AGE	HANDICAPPED
	67 64136	02	37	☐ YES ☒ NO

19A. MISC. INFORMATION (scars, marks, etc.)

20. DEFENDANT'S RESIDENCE ADDRESS	20A. APT. NO.	21. BORO, TOWN, CITY, STATE, ZIP CODE	22. DEF. NEW PCT.	23. DATE OF ARREST (MO. DAY YR.)	24. PCT. OF ARR.
170 PROSPECT AVE	5E	Hackensack NJ.			

25. ARREST NO.	26. CHARGE - PENAL LAW, TRAFFIC, F.A.C., ETC.	27. CRIME CLASS	28. NAME & ADDRESS, NEXT OF KIN
	240.30	M V	

29. ARRESTING OFFICER'S NAME	30. TAX REG. NO.	31. SHIELD NO.	32. DEPT./AGENCY	33. COM'D CDE
Joseph Calabrese	871713718	4448	NYPD	

34. DEFENDANT'S EMPLOYER'S NAME / ADDRESS / TEL. NO.

COMPLAINT & WARRANT ORDERED

FOR OFFICE USE ONLY

COMPLAINT & WARRANT ORDERED

F.W.D. DATE (MO. DAY YR.)	PADE FC	COMMANDS	ARREST ON WARRANT	FAIN COMPUTER HIT
			☐	☐

LOCKED DATE (MO. DAY YR.)	☐ D ☐ D	D.C. COUNTY CODE NO.	ARREST OFF. LAST NAME	FIRST

D.C. CHECK DATE (MO. DAY YR.)	NO PERMIT	D.C. I.D. NO.	INSTITUTION	PRECINCT NO.	COMMAND	TAPE

ADDITIONAL DATA: I hereby certify that the within is a true Copy of the Record on file at this Court

New York 3-Jan-19

INTER COUNTY ARRAIGNMENT VERIFIED BY	RECD BY	C.W.U.

FAX DATE (MO. DAY YR.)	BOROUGH NO.	FAX NO.

ATTACH POLAROID PHOTO USE SCOTCH TAPE

NOTA: If the Polaroid Photo was not attached to this form, indicate by some notation in the appropriate space

SIGNATURE

DATE

INSTRUCTIONS:
1. Arresting Officers shall complete all information captions which are not shaded.
2. Court Clerks shall enter the "Bail Condition Violated" and enter the NYSID Number if known from caption no. 10.
3. In warrant cases without an arresting officer, Supreme Part Court Clerks shall complete captions 1-2-3-4-5-6-7-8-14-15-16-18A-20-20A-21 based upon the information supplied by the complainant. The name and address of the complainant is to be entered in caption 19A.

ORIGINAL/DUPLICATE TO WARRANT DIVISION — TRIPLICATE TO COURT

BEST AVAILABLE COPY

SEBRING ASSOCIATES/THE EXCELSIOR II

LEASE AGREEMENT

Paragraph 23:

23. Quiet Enjoyment: Subject to the other terms of this lease and if the Tenant complies with the terms of this Lease, the Tenant shall have the right to the undisturbed possession of the Apartment.

PAMELA PERKINS

ADDRESSOGRAPH

BERGEN REGIONAL MEDICAL CENTER, L.P.
PARAMUS, NEW JERSEY

BEHAVIORAL HEALTH SERVICES

INITIAL M.D. PSYCHIATRIC ASSESSMENT & TREATMENT PLAN

A. GENERAL INFORMATION

DATE: 5/4/02 TIME:

AGE: 33 GENDER: M (F)

RACE (Circle): Caucasian Asian (African-American) Hispanic Other:

Source of Information: Patient + PESP

Referred to Hospital by: Police

Reason for Referral: (Primary Psychiatric Evaluation) Requested Admission

Court Order for Admission Other:

B. HISTORY & PRESENT ILLNESS

1. **Presenting Problem or "Chief Complaint"** (as reported in patient's own words, if possible):
"My father placed cameras at my home and called police" Pt was brought by police due to persecutory delusions and assaultive behavior

2. **Present Psychiatric Illness** (Onset of psychiatric symptoms, recent behavioral changes with duration and degree of impairment; current social/occupational functioning):
C. [illegible] 33 yr old A-A-F Pt with no h/o prior psychiatric treatment was residing with her friend with "Bryant". Police went to investigate Bryant concerning his involvement in illegal drugs around 9 o'clock last night. Pt opened the door and assaulted 4 police officers so she was brought to HUMC and she was charged with 4 counts of aggravated assault and 1 count of resisting arrest. PESP was called, when she reported that she was raped by her father and alleged her father raped her sister, and alleged that he spies on her complains to employer and she loses jobs frequently, placed cameras [illegible] to watch her and [illegible] In the ER Pt denied any thoughts to hurt self, others or property. Pt reported working until yesterday 6 p.m as a computer graphics programmer.